STATE OF MICHIGAN

IN THE SUPREME COURT

PEOPLE OF THE STATE OF MICHIGAN

Plaintiff-Appellee

Supreme Court No. 158068

Court of Appeals No. 336406

Lower Court No. 95-10246-01

-vs-

TYKEITH L. TURNER

Defendant-Appellant

WAYNE COUNTY PROSECUTOR

Attorney for Plaintiff-Appellee

STATE APPELLATE DEFENDER OFFICE

Attorney for Defendant-Appellant

SUPPLEMENTAL AUTHORITY PURSUANT TO MCR 7.212(F) AND MCR 7.312(I)

STATE APPELLATE DEFENDER OFFICE

BY: ERIN VAN CAMPEN (P76587)

Assistant Defender 3300 Penobscot Building 645 Griswold Detroit, MI 48226 (313) 256-9833 Following a resentencing and sentence reduction for a murder conviction pursuant to Miller v

Alabama, 567 US 460, 465; 132 S Ct 2455 (2012), the trial court properly resentenced Mr. Turner on

his lesser concurrent conviction for assault. The Court of Appeals reversed, and Mr. Turner filed an

Application for Leave to Appeal with this Honorable Court, which is currently pending. See

Application for Leave to Appeal, 7/12/2018.

On November 21, 2018, this Court remanded a case for resentencing on a concurrent lesser

conviction after the sentence for the more serious conviction was reduced. See *People v Lakeisha Gunn*,

__ Mich __; __ NW2d __ (2018) (Docket No. 156962) (Slip Order attached). In Gunn, this Court

reversed the Court of Appeals judgment and held, "The trial court erred by finding that it did not have

the authority to review the defendant's sentence for second-degree arson." Id. This is because the

original concurrent sentence was imposed without regard to the properly scored guidelines and was

based upon inaccurate information. *Id.*, citing *People v Francisco*, 474 Mich 82, 88; 711 NW2d 44 (2006).

Similarly, Mr. Turner's original concurrent sentence for assault was imposed without regard to

the properly scored guidelines and was based upon inaccurate information, as discussed at length in

Mr. Turner's Application for Leave to Appeal.

Consistent with Gunn, Francisco, and Mr. Turner's due process right to be sentenced on the

basis of accurate information, this Court should reverse the Court of Appeals' judgment and affirm

the trial court's ruling that it had authority to resentence Mr. Turner on his lesser concurrent

conviction for assault.

Respectfully submitted,

Date: November 30, 2018

STATE APPELLATE DEFENDER OFFICE

/s/ Erin Van Campen

BY:

ERIN VAN CAMPEN (P76587)

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Order

Michigan Supreme Court Lansing, Michigan

Stephen J. Markman,

Richard H. Bernstein

Chief Justice

Brian K. Zahra Bridget M. McCormack David F. Viviano

Kurtis T. Wilder Elizabeth T. Clement,

Justices

November 21, 2018

156962

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,

 \mathbf{V}

SC: 156962 COA: 333317

Wayne CC: 13-004566-FH

LAKEISHA NICOLE GUNN, Defendant-Appellant.

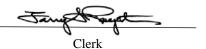
On order of the Court, the application for leave to appeal the November 21, 2017 judgment of the Court of Appeals is considered and, pursuant to MCR 7.305(H)(1), in lieu of granting leave to appeal, we REVERSE the judgment of the Court of Appeals, we VACATE the second-degree arson sentence of the Wayne Circuit Court, and we REMAND this case to the trial court for resentencing on that count. The trial court erred by finding that it did not have the authority to review the defendant's sentence for seconddegree arson. When the defendant was originally sentenced, the probation department calculated her guidelines only for the higher crime class offense of placing explosives on or near property, MCL 750.207(2)(b), and not for second-degree arson, MCL 750.73(1). The trial court sentenced the defendant to 15 years for both crimes, which was a departure sentence for the arson offense, but it had no practical effect in light of the sentence for placing explosives on or near property. The trial court acknowledged this by stating that the arson sentence was "really based on" the higher class sentence. After the defendant was resentenced in 2016 and her sentence for placing explosives on or near property was reduced, the departure sentence for arson was no longer inconsequential. The arson sentence, being based on a higher class crime offense sentence that had been significantly reduced, was invalid because it was based on inaccurate information, and the trial court had the authority to resentence the defendant on that count. *People v Francisco*, 474 Mich 82, 88 (2006); MCR 6.429(A).

WILDER, J., did not participate because he was on the Court of Appeals panel at an earlier stage of the proceedings.



I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

November 21, 2018



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